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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**
8

9 JEFFREY FRANKLIN

10 Petitioner,

3:15-cv-00308-LRH-VPC

11 vs.

ORDER

12 ROBERT LeGRAND, *et al.*,

13 Respondents.
14 _____/

15 This case is a petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254, by Jeffrey
16 Franklin, a Nevada prisoner. Franklin filed his habeas corpus petition, along with an application to
17 proceed *in forma pauperis* (ECF No. 1) on June 10, 2015.

18 The financial information provided with the application to proceed *in forma pauperis*
19 indicates that Franklin qualifies for *in forma pauperis* status. The application to proceed *in forma*
20 *pauperis* will be granted.

21 The court has reviewed Franklin's petition for a writ of habeas corpus pursuant to Rule 4 of
22 the Rules Governing Section 2254 Cases in the United States District Courts. It plainly appears that
23 Franklin's petition must be dismissed, as it is a successive habeas petition and Franklin has not
24 obtained from the court of appeals the permission required to file such a successive petition.

25 Franklin's petition in this case (which is found in the electronic file for the case, attached to
26 his application to proceed *in forma pauperis*) challenges his conviction in Case No. C215549 in

1 Nevada's Eighth Judicial District Court. *See* Petition for Writ of Habeas Corpus, p. 2. In the
2 petition, Franklin acknowledges that this is not his first habeas petition in this court, but he --
3 misleadingly -- states that his previous petition was dismissed for procedural reasons. *See id.*

4 The court takes judicial notice of the proceedings in Case Nos. 3:10-cv-00020-HDM-VPC
5 and 3:13-cv-00714-MMD-WGC in this court. *See* Fed. R. Evid. 201.

6 In Case No. 3:10-cv-00020-HDM-VPC, as in this case, Franklin challenged his conviction in
7 Case No. C215549 in the Eighth Judicial District Court. *See* Petition for Writ of Habeas Corpus,
8 ECF No. 4 in Case No. 3:10-cv-00020-HDM-VPC, p. 2. In Case No. 3:10-cv-00020-HDM-VPC,
9 on January 30, 2013, the court denied Franklin's petition on its merits, and, further, denied Franklin
10 a certificate of appealability. *See* Order, ECF No. 25 in Case No. 3:10-cv-00020-HDM-VPC.
11 Judgment was entered accordingly on that same date. *See* Judgment, ECF No. 26 in Case No.
12 3:10-cv-00020-HDM-VPC. On May 23, 2013, the Ninth Circuit Court of Appeals denied
13 Franklin a certificate of appealability. *See* Order of the Court of Appeals, ECF No. 30 in Case No.
14 3:10-cv-00020-HDM-VPC.

15 Franklin then initiated Case No. 3:13-cv-00714-MMD-WGC on December 30, 2013. In that
16 case, Franklin again challenged his conviction in Case No. C215549 in Nevada's Eighth Judicial
17 District Court. *See* Petition for Writ of Habeas Corpus, Attachment 1 to ECF No. 1 in Case No.
18 3:13-cv-00714-MMD-WGC, p. 2. On April 17, 2014, the court screened the petition in that case,
19 pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts,
20 and summarily dismissed the action, because it was successive and Franklin did not have permission
21 from the court of appeals to file such a successive petition. *See* Order entered April 17, 2014,
22 ECF No. 3 in Case No. 3:13-cv-00714-MMD-WGC. The court denied Franklin a certificate of
23 appealability. *See id.* Judgment was entered accordingly on the same date. *See* Judgment, ECF
24 No. 4 in Case No. 3:13-cv-00714-MMD-WGC. The court of appeals denied Franklin a certificate of
25 appealability on June 23, 2014. *See* Order of the Court of Appeals, ECF No. 7 in Case No.
26 3:13-cv-00714-MMD-WGC.

1 A successive habeas petition may not be filed in this court unless the petitioner has obtained
2 permission from the Ninth Circuit Court of Appeals. *See* 28 U.S.C. § 2244(b)(3)(A) (“Before a
3 second or successive application permitted by this section is filed in the district court, the applicant
4 shall move in the appropriate court of appeals for an order authorizing the district court to consider
5 the application.”). Franklin has made no allegation or showing that he has obtained such permission
6 from the court of appeals. Therefore, this action will be summarily dismissed.

7 **IT IS THEREFORE ORDERED** that the petitioner’s application to proceed *in forma*
8 *pauperis* is **GRANTED**. The petitioner is not required to pay the filing fee for this action.

9 **IT IS FURTHER ORDERED** that the clerk of the court shall separately file the petition for
10 writ of habeas corpus, and the memorandum in support of that petition, which are attachments 1 and
11 2 to the application to proceed *in forma pauperis* (ECF No. 1).

12 **IT IS FURTHER ORDERED** that the clerk of the court shall separately file petitioner’s
13 motion for appointment of counsel, which is attachment 3 to the application to proceed *in forma*
14 *pauperis* (ECF No. 1).

15 **IT IS FURTHER ORDERED** that the motion for appointment of counsel is **DENIED**.

16 **IT IS FURTHER ORDERED** that the clerk of the court shall add Adam Paul Laxalt,
17 Attorney General of the State of Nevada, to the CM/ECF docket, as counsel for respondents. The
18 clerk of court shall serve respondents with a copy of the habeas corpus petition and a copy of this
19 order. Respondents need take no action with respect to this case.

20 **IT IS FURTHER ORDERED** that this action is dismissed without prejudice.

21 **IT IS FURTHER ORDERED** that the petitioner is denied a certificate of appealability.

22 **IT IS FURTHER ORDERED** that the clerk of the court shall enter judgment accordingly.

23 Dated this 12th day of June, 2015.

24 
25 LARRY R. HICKS
26 UNITED STATES DISTRICT JUDGE